IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL REVIEW No. 5 of 2004

DAYA RAM
V/S
BOARD OF MUSLIM WAKF & ORS

Mr. MC BHOOT, for the appellant / petitioner

Nobody appears for the respondents, despite service.

Date of Order : 22nd Feb.,2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this review petition, the petitioner seeks to review my judgment dt. 28.11.2003, whereby the revision petition of the petitioner was dismissed.

Before proceeding to consider the submissions of the learned counsel for the petitioner, I may myself observe, that on the first page, in the second para of the judgment, in the third line, the suit number has been mentioned as “35/57” while actually it is the suit number 36/57. The same is accordingly ordered to be corrected, and be read as Suit No. “36/57”.

I now take up the contentions/grounds taken by the petitioner in the review petition, and repeated during the arguments by the learned counsel, to review the judgment

dt. 28.11.2003.

The first submission made is, that it is recorded in the order "decree passed against the petitioner in Suit No. 36 of 1957, is very much covered by the compromise decree dt. 24.2.1970", as a submission of the learned counsel for the petitioner.

It is noticed at page-8 of the judgment as under:-

> "I may also notice, and observe here, that the learned counsel for the petitioner, not only did not dispute, rather admitted, that the decree passed against the petitioner in Suit No. 36 of 1957, is very much covered by the compromise decree dt. 24.2.1970. In that view of the matter, nothing more is required to be said about it."

While according to the learned counsel, the counsel simply stated, that the property covered by the decree in Suit No. 36/57 is a part of the property covered by the compromise decree dt. 24.2.1970.

I have considered the submission. It is maintained, that the submission of the learned counsel has been correctly recorded, and has neither been mis-interpreted, nor has been misquoted. I need not clarify, that even from perusal of the objection petition filed by the petitioner under Section 47, it is clear, that therein there is no dispute raised about the identity of the

property covered by the decree, and for the possession whereof execution was filed. In that view of the matter, the only controversy was about the decree being covered by the compromise dt. 24.2.1970, or not, and thus the submission has been correctly recorded.

The next submission made is, that the decree holder himself has not come with a case, about the entire decree having been transferred, and thus the finding on issue no. 4 is sought to be reviewed. Suffice it to say, that at page-9 of the judgment, in the last para, it was clearly noticed that this finding of the Executing Court on issue no.4 was not challenged by the learned counsel for the petitioner before me. Significantly this observation has not been disputed. Thus this ground does not hold good.

It is then submitted, that at page-11, in the last line, “judgment debtor” has been referred instead of “decree holder” which is an error apparent on the face of record. Accepting the submission, it is ordered that the word “judgment debtor” appearing in the last line at page-11 of the judgment be substituted by the word “decree holder”. However, this does not in any manner effect the ultimate decision, recorded in the judgment.

It was then contended that at page-12 it has been noted that there is no order sheet dt. 22.3.1974, while at

page-18 the order sheet has been referred. Of course at page-12 it is so mentioned, but then, as I recollect it was during course of arguments, that a submission was raised by the learned counsel for the petitioner, that there is no order sheet of 22.3.1974. Be that as it may. The fact does remain, that there is order sheet of 22.3.1974, and therein the admissibility of assignment was assailed. Accordingly it is directed, that the sentence appearing at page 12 being "It may be noticed that there is no order sheet of the Executing Court dt. 22.3.1974." is ordered to be deleted.

The contents and effect of the order sheet dt. 22.3.74 has already been discussed at page-18, and conclusions have been arrived at. In that view of the matter, mere mention of the above words, which have been ordered to be deleted, does not at all in any manner effect the ultimate findings recorded in the judgment.

Then, the next ground raised is, that at page-8 of the judgment, statement of Haji Abadulla has been referred, to the effect, that he has proved the property in question as "A B C D", while Haji Abadulla never identified the property in the suit. In the first instance it is maintained, that Haji Abadulla has deposed, that in Ex.1 Bara of Daya Ram is "A B C D". That apart, what is significant to note is, that in the objection petition

filed under Section 47, which was ultimately decided by the order sought to be reviewed, or even in the earlier objection petition, this was never the contention raised, that the property from which the petitioner is sought to be evicted is not the property covered by the decree, nor any other dispute about identity of the property was ever raised by the petitioner. In that view of the matter, in view of the judgment in Barkat Ali's case, referred to in the judgment sought to be reviewed, also, the controversy sought to be raised is not required to be entertained in the review petition.

The last submission made is, that the basic question whether decree in Suit No. 36/57 has been transferred or assigned to Rajasthan Board of Muslim Wakf, can only be decided by the document, and the fact of transfer is different from validity of transfer, and that the petitioner raised the question, that there is no document on record, from which it can possibly be said, that the decree was assigned or transferred, but then the point has not been decided, and on that count review is sought.

Suffice it to say, that the finding has been recorded at page-17, on the basis of subsequent judgment of Hon'ble the Supreme Court in Dhani Ram's case, and effect of previous orders inter parties has also been considered.

Therefore, on this ground also no alteration is required in the judgment.

With the aforesaid directions as contained in foregoing paras, the review petition is disposed of, maintaining the ultimate findings on merit.

(N P GUPTA),J.

/Sushil/